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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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COMERICA BANK,
Plaintiff,
v.

DENNIS SCIALPI, 12-cv-00897-ERK-SMG
Defendant.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION SEEKING ENTRY OF DEFAULT JUDGMENT**

Plaintiff Comerica Bank ("Comerica"), by its attorneys, Hunton & Williams LLP, hereby requests (the "Motion") pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure (the "Federal Rules") that the Clerk of the Court enter a default judgment against the above-captioned defendant Dennis Scialpi (the "Defendant"). In support of this Motion, Comerica submits the Affidavit of Richard P. Norton (the "Norton Affidavit"), pursuant to Rule 55.2(a) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the "Local Rules"), which has been filed contemporaneously herewith. In further support of this Motion, Comerica states as follows:

I. Statement of Facts

1. Defendant is the former President and Secretary of certain corporate entities that operated school bus routes under contract with the Board of Education of the City School District of New York.
2. Comerica is a bank with its principal place of business in Dallas, Texas.

3. Pursuant to certain Loan Documents¹ executed with the corporate Borrowers, Comerica loaned money to the Borrowers for the operation of their school bus business. *Compl.* p. 4. On or about April 21, 2010, Defendant executed the Guaranty “unconditionally and absolutely” guaranteeing payment to Comerica of all existing and future indebtedness of each of the Borrowers. *Compl.* p. 4.

4. Prior to and continuing into 2011, the Borrowers were in default to Comerica under the Loan Documents. On or about May 17, 2011, Comerica sent the Acceleration Notice to the Borrowers and Defendant demanding and accelerating payment under the Loan Documents and the Guaranty. *Compl.* p. 4-5.

5. On or about July 6, 2011, the Borrowers filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Cases”). *See In re USA United Fleet, Inc., a/k/a Shoreline Fleet, Inc. et al.*, Case No. 11-45867- JF (jointly administered).

6. Pursuant to a sale of assets in the Bankruptcy Cases, the indebtedness owed to Comerica by the Borrowers and the Defendant was reduced by several million dollars.

7. On or about February 23, 2012, Comerica filed the instant complaint (the “Complaint”) against Defendant requesting entry of a judgment for breach of the Guaranty plus accrued and unpaid interest through the date of judgment. A true and correct copy of the Complaint is attached to the Norton Affidavit.

8. The Clerk of the Court issued a summons on February 23, 2012 (the “Summons”).

¹ Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Complaint.

9. The Defendant was properly served with a copy of the Summons and Complaint by personal service on February 24, 2012. A Certificate of Service certifying the date and manner of service was filed with the Court on February 28, 2012.

10. The Defendant has failed to file an answer, motion, or other responsive pleading within 21 days from the date of service of the Summons, as required by Federal Rule 12(a). This failure to plead or otherwise defend within the 21 day time limit constitutes a default pursuant to Federal Rule 55(a).

11. The Clerk entered a default against the Defendant on April 6, 2012. A copy of the Clerk's Certificate of Default with respect to the Defendant is attached to the Norton Affidavit.

12. In accordance with Local Rule 55.2, Comerica states that the principal amount owed by the Defendant as guarantor of the indebtedness owed to Comerica by the Borrowers was \$10,694,049.19 as of the date the Borrowers filed bankruptcy petitions on July 6, 2011. As a result of the sale of certain assets in those bankruptcy cases in August 2011, Comerica received gross proceeds of \$6,770,394.00. The proceeds from the bankruptcy sale were applied to principal, interest, late charges and expenses pursuant to the agreements with the Borrowers. The application of the gross proceeds reduced the principal amount owed by the Defendant under the Guaranty at issue, as of April 27, 2012, to \$4,671,301.38. Accrued and unpaid interest under the Guaranty through April 27, 2012 is \$303,678.02, and said interest continues to accrue at the rate of \$1,245.91 per day. As of April 27, 2012, the total amount of principal and interest due Comerica under the Guaranty is \$4,974,979.40. Comerica is not seeking attorneys' fees or costs as part of this Motion.

II. Argument

13. Comerica has demonstrated its entitlement to a default judgment. "[W]hen a default is entered, all well-pleaded factual allegations in the complaint are accepted as true."

Gee Chan Choi v. Jeong-Wha Kim, No. 04-CV-4693, 2006 WL 3535931 at *4 (E.D.N.Y. Dec. 7,

2006)(citations and internal quotation marks omitted). *See also Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992)(“a party’s default is deemed to constitute a concession of all well pleaded allegations of liability”).

14. The well-pleaded allegations in the Complaint establish that Comerica is entitled to a money judgment against Defendant under the Guaranty.

III. Conclusion

15. For the foregoing reasons, Comerica respectfully requests that the Clerk enter a default judgment against the Defendant, substantially in the form attached to the Norton Affidavit as Exhibit C, pursuant to Federal Rule 55.

Dated: New York, New York
May 3, 2012

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